IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

O.P.No. 1332 of 2003(H)

PETITIONERS:

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1. SMT.INDIRA M.B., AGED 41 YEARS,
   VARUTHUKALA KUDIYIL, EAST KALOOR P.O.
   THODUPUZHA TALUK, SECRETARY, KALOOR MALIKKAVU DEVI
   TEMPLE, EAST KALOOR P.O., THODUPUZHA TALUK.

2. SHAJI KUMAR K.M. S/O. KESAVAN,
   AGED 30 YEARS, KAITHMATTOM HOUSE, EAST KALLOR,
   THODUPUZHA TALUK MEMBER, KALOOR MALIKKAVU DEVI
   TEMPLE, EAST KALOOR P.O., THODUPUZHA TALUK.

BY ADV. SRI.T.V.GEORGE
SMT.ROOPA RANI.G

RESPONDENTS:

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1. TRAVANCORE DEVASWOM BOARD, REP.BY ITS
   SECRETARY, DEVASWOM BOARD OFFICE, NANDANCODE,
   THIRUVANANTHAPURAM.

2. THE ASST.COMMISSIONER, TRAVANCORE
   DEVASWOM BOARD TRIKKARIYOOR GROUP OF TEMPLES,
   TRIKARIYOOR, KOTHAMANGALAM.

3. LAND TRIBUNAL, THODUPUZHA NOW
   FUNCTIONING AT LAND TRIBUNAL TRIPPUNITHURA,
   ERNAKULAM.

4. RAMAKRISHNAN NAIR, S/O.MADHAVAN NAIR,
   AGED 62 YEARS, THANDAL HOUSE, EAST KALOOR P.O.,
   THODUPUZHA.

R3 BY GOVERNMENT PLEADER SRI. MANOJ
SRI.M.K.CHANDRAMOHAN DAS, SC, TDB
R1&R2 ADV.SRI. S.GOPAKUMARAN NAIR, SC. TDB
R4 SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE NOTICE DTD.19/5/77 ISSUED BY THE LAND TRIBUNAL, THODUPUZHA TO THE SECRETARY, DEVASWOM BOARD, TRIVANDRUM.

EXT.P2: COPY OF THE REGISTER OF THODUPUZHA TALUK, KUMARAMANGALAM VILLAGE.

EXT.P3: COPY OF THE JUDGMENT DTD.12/9/90

EXT.P4: COPY OF CIRCULAR NO.43136/P1/71 HD. DTD. 20/3/1974.

TRUE COPY

P.A.TO JUDGE

A.K.BASHEER,J

O.P.NO.1332 OF 2003

DATED THIS THE 14TH DAY OF DECEMBER,2006

JUDGMENT

Petitioners are said to be Secretary and Member respectively of Kaloor Malikkavu Devi Temple in Thodupuzha Taluk.

2. The prayer in this writ petition is to issue a writ of certiorari or such other appropriate writ or direction to quash Ext.P3 order passed by the Land Tribunal, Thodupuzha in SM 61 of 1977. The other prayer in the writ petition is to issue a writ of mandamus or such other appropriate writ commanding respondent no.4 not to create any document relating to the property referred to in the purchase certificate issued to him.

3. It is contended by the petitioner that respondent no.4 in collusion with the Travancore Devaswom Board had managed to obtain a purchase certificate from the Land Tribunal in respect of 1.90 acres of Devaswom property. It is alleged that the land belonged to the Devaswom and it had been outstanding in the possession of the Devaswom for years. But in the year 1977, Devaswom Board did not contest the case before the Land Tribunal when the application for purchase certificate was filed by respondent no.4. Consequently, the

purchase certificate was issued in favour of respondent no.4 in respect of an extent of 1.90 acres. Later the purchase certificate was cancelled by the very same Land Tribunal, since it was noticed that the land did not belong to Devaswom and it was in fact Government Purampoke Land (Tharish). Respondent no.4 did not challenge the order of cancellation for several years. But in the year 1989 he filed an original petition before this court challenging the said order. This court allowed the original petition and set aside the order of cancellation issued by the Land Tribunal which was directed to reconsider the matter after hearing respondent no.4. It was thereafter that an order was passed by the Land Tribunal cancelling its earlier order. In other wards, the order granting purchase certificate in favour of respondent no.4 was restored.

4. In the counter affidavit respondent no.4 has stoutly denied the allegation made by the petitioner. it is contended by respondent No. 4 that an extent of 2 acres of land situated in Survey No.1059/4 of Kumaramangalam village which belonged to Travancore Devaswom Board was outstanding in the possession of his father Sri. Madhavan Nair, on lease arrangement. It appears that in the year 1965 Devaswom Board filed O.A.No.707/65 before the Land Tribunal for resumption of 75 cents out of the said two acres. The application

was resisted by his father. However, the Land Tribunal allowed the application filed by the Devaswom Board. The said order was challenged by Sri.Madhavan Nair before the Appellate Authority (Land Reforms) Ernakulam. The order passed by the Land Tribunal was set aside by the Appellate Authority and the case was remitted back to the Land Tribunal for fresh consideration. In the meanwhile Sri. Madhavan Nair passed away in December,1971. Respondent no.4 and his brother, were impleaded in the proceedings before the Land Tribunal. While the case was pending, as O.A.No.877/1971, the matter was settled between the parties. It was agreed that ten cents out of two acres would be surrendered by respondent no.4 to the temple. Accordingly a compromise petition was filed and the Land Tribunal passed an order recording the compromise. A copy of the order passed by the Land Tribunal on August 8,1974, is on record as Ext.R4(1). It is further contended by respondent no.4 that in the family partition, the above land was allotted to his share and he had been in possession of the same. While so in a Suo Motu proceeding initiated by the Land Tribunal, Thodupuzha, Ext.R4 purchase certificate was issued in favour of respondent no.4 for an extent of 1.90 acres. Later in the year 1989 he came to know that the purchase certificate issued in his favour had been cancelled by the Land

Tribunal. The same was challenged before this court in O.P.No.9534 of 1989. By judgment dated January 11,1990, this court set aside the order passed by the Land Tribunal and directed the Tribunal to reconsider the matter after affording respondent no.4 sufficient opportunity to be heard. It was thereafter, that Ext.P3 order was passed by the Land Tribunal.

5. It is contended by the respondent no.4 that Ext.P3 order was passed way back in the year 1990. The said order was sought to be challenged after a lapse of more than 13 years in this original petition. It is also contended that the Devaswom Board has not so far challenged Ext.P3 order. It is further pointed out that one Damodharan Nair Viswanathan Nair, President of Kaloor Malikkavu Sridevi Temple had filed O.S.No.114 of 1990 before the Munsif court, Thodupuzha praying for a declaration that the property in possession of respondent no.4 having an extent of 1.90 acres belonged to the Devaswom . Recovery of possession was also prayed for in the suit, in which respondent no.4 Travancore Devaswom Board, State of Kerala etc. were impleaded. The Devaswom Board did not file a written statement before the Munsif court. Ultimately by judgment dated July 3, 1993, Munsif court dismissed the above suit. Neither the plaintiff nor the Devaswom had challenged the above judgment and

decree. It is also pointed out by the learned counsel that the plaintiff in the said suit viz., Damodharan Nair Viswanathan Nair, had in fact sought impleadment in the proceedings before the Land Tribunal. His application was rejected by the Land Tribunal. The said order was also not challenged by either Sri. Damodharan Nair or anybody connected with the temple. It is contended by the learned counsel that the issue had been concluded not only by the earlier orders passed by the Land Tribunal but by the judgment and decree passed by the Civil court as well. The attempt of the petitioner is only to mislead this court by suppressing the above material facts.

6. Interestingly, Devaswom has filed a Counter affidavit in this original petition repeating whatever had been stated in the earlier original petition. To a specific query as to whether the Devaswom had challenged Ext.P3 order as provided under the Kerala Land Reforms Act, the response of the learned counsel was in the negative. It was further queried whether the Devaswom had ever filed a suit for recovery of the property in question. The answer was again in the negative.

7. Having heard learned counsel for the parties and having perused the materials on record I have no hesitation to hold that the original petition is totally misconceived and is a clear abuse of process.

Petitioners have not produced any document to show that they were the secretary and member respectively of the Temple Advisory Committee. There is also nothing on record to show that they were authorised either by the Temple Managing Committee or the Advisory Committee to file this original petition before this court.

8. As noticed already the Devaswom and temple authority had accepted the verdict of the civil court. They had also not challenged the orders passed by the Land Tribunal. The then President of the Temple Committee had not challenged the order passed by the Land Tribunal rejecting his application for impleadment. The original petition is totally devoid of merit. In my view this is a fit case where respondent no.4 has to be awarded costs but in the facts and circumstances I refrain from doing so.

The original petition is dismissed.

A.K.BASHEER,JUDGE

dvs